

Decision 02-06-066 June 27, 2002

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Southern California Edison Company (E 3338 E) for Authority to Institute a Rate Stabilization Plan with a Rate Increase and End of Rate Freeze Tariffs.

Application 00-11-038
(Filed November 16, 2000)

Emergency Application of Pacific Gas and Electric Company to Adopt a Rate Stabilization Plan.

Application 00-11-056
(Filed November 22, 2000)

Petition of The Utility Reform Network for Modification of Resolution E-527.

Application 00-10-028
(Filed October 17, 2000)

ORDER AWARDING INTERVENOR COMPENSATION

This decision awards Aglet Consumer Alliance (Aglet) \$34,242.33 in compensation for its contribution to Decision (D.) 02-02-052 (Decision). Aglet's request for compensation was unopposed.

1. Background

In D.02-02-052, the Commission allocated the \$9.045 billion revenue requirement of the Department of Water Resources (DWR) among Pacific Gas and Electric Company (PG&E), Southern California Edison Company (Edison), and San Diego Gas & Electric Company (SDG&E), covering the period 2001 and 2002. The decision also implemented related utility remittance charges to DWR,

together with procedures for subsequent true up of the revenue requirement and related implementation measures.

Subsequently, the Commission issued D.02-03-003, which corrected errors in D.02-02-052, D.02-03-062, which modified and denied rehearing of D.02-02-052 and D.02-02-003. These orders constitute the final decisions in the 2001-2002 DWR cost allocation phase of the above-captioned proceeding.

2. Procedural Matters

Pursuant to Rule 77.7 (f)(6), concerning decisions (such as today's decision) on intervenor compensation requests, the otherwise applicable 30-day period for public review and comment is being waived.

3. Requirements for Awards of Compensation

Intervenors who seek compensation for their contributions in Commission proceedings must file requests for compensation pursuant to Pub. Util. Code §§ 1801-1812. (All statutory citations are to the Pub. Util. Code.) Section 1804(a) requires an intervenor to file a notice of intent (NOI) to claim compensation within 30 days after the prehearing conference or by a date established by the Commission. The NOI must present information regarding the nature and extent of the customer's¹ planned participation and an itemized estimate of the compensation the customer expects to request. The NOI may request a finding of eligibility. Aglet timely filed its NOI on January 26, 2001,

¹ To be eligible for compensation, an intervenor must be a "customer" as defined by § 1802(b). In D.98-04-059 (footnote 14) we affirmed our previously articulated interpretation that compensation be proffered only to customers whose participation arises directly from their interest as customers. (See D.88-12-034, D.92-04-051, and

Footnote continued on next page

after the first prehearing conference and was found to be eligible for compensation in this proceeding by a ruling dated April 20, 2001. The same ruling found that Aglet had established significant financial hardship.

Other code sections address requests for compensation filed after a Commission decision is issued. Section 1804 (c) requires an eligible customer to file a request for an award within 60 days of issuance of a final order or decision by the Commission in the proceeding. Aglet timely filed its request for an award of compensation on March 5, 2001. Under § 1804 (c), an intervenor requesting compensation must provide “a detailed description of services and expenditures and a description of the customer’s substantial contribution to the hearing or proceeding.”

Section 1804(e) requires the Commission to issue a decision that determines whether the customer has made a substantial contribution and what amount of compensation to award. The level of compensation must take into account the market rate paid to people with comparable training and experience who offer similar services, consistent with § 1806.

4. Substantial Contribution to Resolution of Issues

To merit an award of intervenor compensation, Aglet must show that it made a “substantial contribution” to D.02-02-052. As defined in § 1802(h), a “substantial contribution” means that:

“in the judgment of the commission, the customer’s presentation has substantially assisted the commission in the making of its order or decision because the order or decision has adopted in whole or in

D.96-09-040.) Today’s decision, like the statute, uses “intervenor” and “customer” interchangeably.

part one or more factual contentions, legal contentions, or specific policy or procedural recommendations presented by the customer. Where the customer's participation has resulted in a substantial contribution, even if the decision adopts that customer's contention or recommendations only in part, the commission may award the customer compensation for all reasonable advocates fees, reasonable expert fees, and other reasonable costs incurred by the customer in preparing or presenting that contention or recommendation."

Pursuant to § 1802(h), party may make a substantial contribution to a decision in one of several ways. It may offer a factual or legal contention upon which the Commission relied in making a decision, or it may advance a specific policy or procedural recommendation that the ALJ Commission adopted. A substantial contribution includes evidence or argument that supports part of the decision even if the Commission does not adopt a party's position in total.²

Aglet made a substantial contribution to D.02-02-052, as demonstrated by Commission's reliance on input by Aglet. Specifically, the adopted DWR revenue allocation approach incorporated, in part, principles consistent with those sponsored by Aglet witness James Weil. For example, the adopted approach incorporated a pro rata allocation of long-term contract costs. Aglet was among those parties advocating such pro rata allocation. In its analysis of differences between long-term and short-term contract costs, the Commission noted that DWR procured power only under short-term arrangements during the first three months of 2001. Aglet developed this point

² The Commission has provided compensation even when the position advanced by the intervenor is rejected. See D.89-03-063 (awarding San Luis Obispo Mothers For Peace and Rochelle Becker compensation in Diablo Canyon Rate Case because their arguments, while ultimately unsuccessful, forced the utility to thoroughly document the safety issue involved).

through cross-examination of Edison's witness, and later, through oral argument. The Commission also agreed with Aglet's position that DWR contracts stabilized the power market, to the benefit of all California ratepayers.

Aglet also contributed to the decision regarding the overall level of the DWR revenue requirement, and support for efforts to renegotiate lower prices under DWR contracts. A further contribution by Aglet related to implementation of the DWR revenue requirement. These implementation issues included the need for adjustment mechanisms in the form of balancing accounts, and for limitations on the utilities' recovery of an allowance for uncollectibles. We agree that Aglet made a substantial contribution in this phase of the proceeding on those issues addressed in D.02-02-052.

5. Reasonableness of Requested Compensation

5.1 Elements of Intervenor Claim

Aglet requests compensation of \$34,242.33 comprised of the following elements:

<u>Professional Fees</u>		<u>Costs</u>
James Weil	121.7 hours X \$220/hour	=\$26,774.00
	48.1 hours X \$110/hour	=\$ 5,291.00
 <u>Miscellaneous Costs</u>		
Photocopying		=\$ 1,011.95
Postage		=\$ 629.87
Travel Expenses (bridge tolls, parking, transit fares, vehicle mileage)		=\$ 531.51
<u>Total</u>		<u>=\$34,242.33</u>

5.2 Overall Benefits of Participation

In D.98-04-059, the Commission adopted a requirement that a customer demonstrate its participation was “productive,” as that term is used in §1801.3, where the Legislature gave the Commission guidance on program administration. (See D.98-04-059, *mimeo.* at 31-33, and Finding of Fact 42). In that decision we discuss the requirement that participation should bear a reasonable relationship to the benefits realized through such participation. Customers are directed to demonstrate productivity by assigning a reasonable dollar value to the benefits of their participation to ratepayers. This exercise assists us in determining the reasonableness of the request and in avoiding unproductive participation.

Aglet argues that its participation in the DWR revenue implementation phase was productive, particularly in view of the magnitude of funds that were subject to allocation. As noted by Aglet, a tiny change to allocation percentages applied to the more than \$9 billion of revenue requirements would overwhelm Aglet’s claim for intervenor compensation. Aglet’s participation was instrumental in making the selection of allocation methodology among competing proposals. The adopted allocation methodology made a difference of hundreds of millions of dollars in costs shifted. Accordingly, we find that Aglet’s participation was productive.

5.3 Hours Claimed

Aglet documented its claimed hours through detailed records of time spent on the various aspects of this proceeding. The records indicate both the professional hours spent, and the activities associated with the hours. The

hourly breakdowns and allocation of hours to different activities reasonably support the 121.7 claimed hours for Aglet. Aglet provided an allocation of its claimed hours by major issue, adjusted for voluntary disallowances, as shown in the table below.

ALLOCATION OF PROFESSIONAL TIME BY MAJOR ISSUE

Cost Category	Professional Hours	Disallowed Hours	Compensation Hours
General work	22.9		22.9
Issues:			
Allocation principles	29.4		29.4
Timing of DWR purchases	23.0	4.6	18.4
Other issues	+ 62.2	+ 18.7	+ 43.5
Issues subtotal	114.6	23.3	91.3
Application for rehearing	15.0	7.5	7.5
Review rehearing decision	+ 0.8	+ 0.8	+ 0
Total Hours	153.3	31.6	121.7

The hours claimed by Aglet include all professional time, and all time spent traveling and preparing the compensation request, except for four voluntary disallowances made by Aglet, as described below.

The first voluntary disallowance is for 20% of Aglet's time, or 4.6 hours allocated to timing of DWR purchases. The Commission agreed with Aglet regarding changes in the mix of DWR purchases during 2001, but Aglet did not prevail in its argument that DWR purchases during the early months of 2001 should be allocated on a postage stamp basis. The second voluntary disallowance is for 30% of Aglet's time, or 18.7 hours, spent on other issues. The Commission adopted Aglet's positions regarding balancing accounts, which

required the most effort among other issues, and in part regarding uncollectibles. The Commission either rejected or ignored Aglet's arguments regarding DWR reserve requirements and the intermediate term contracts. The third voluntary disallowance is for 50% of Aglet's time, or 7.5 hours, spent on a joint application for rehearing of D.02-02-052 filed by Aglet and TURN. The fourth voluntary disallowance is for 0.8 hours spent reviewing D.02-03-062, the Commission's order on rehearing of D.02-02-052. These voluntary disallowances reasonably account for time spent without substantial contribution to D.02-02-052.

Aglet allocated professional time to major subjects, except for general activities that cannot be reasonably assigned to substantive issues: initial review, discovery, attendance at one prehearing conference, and attendance at DWR workshops.

5.4 Hourly Rates

Aglet requests an hourly rate of \$220 per hour for the professional work of James Weil and a compensation rate of one-half that rate (i.e., \$110 per hour) for Weil's travel time associated with professional work and for time spent preparing the compensation claim. The travel time was spent driving between Weil's offices (in Greenbrae and Michigan Bluff) and Commission offices in San Francisco. Weil's work was performed during the years 2001 and for 2002. The requested hourly rates were previously approved for Aglet by the Commission in D.00-076-015, D.00-11-02, and most recently, in D. 02-02-037. In view of these prior authorizations, we find the requested hourly rates to be reasonable and consistent for purposes of this request.

5.5 Other Costs

Aglet requests \$2,177.33 for other costs (photocopying, postage, fax, bridge tolls, parking and vehicle travel). Aglet has itemized these costs by date, amount and activity. Based on the scope of Aglet's work, documents needed, and the size of the service list, these costs, representing 6.4% of the total request, appear reasonable.

6. Award

We award Aglet \$34,242.33, calculated as described above. In previous intervenor compensation awards in this docket, we have assessed responsibility for payment equally among PG&E and Edison. In this instance, however, we conclude that responsibility for payment should also be borne by SDG&E since all three utilities had an interest in the phase of the proceeding that was addressed in D. 02-02-052. Accordingly, we shall allocate responsibility for payment of Aglet's award among PG&E, Edison, and SDG&E. Since the three utilities differ greatly in size, we will allocate their share based on the relationship of their respective California electric revenues, as most recently reported to us. On this basis, PG&E will bear 52% of the award. Edison 41.5%, and SDG&E 8.5%. Consistent with previous Commission decisions, we will order that interest be paid on the award amount (calculated at the three-month commercial paper rate), commencing the 75th day after Aglet filed its compensation request and continuing until the utilities make full payment of the awards.

As in all intervenor compensation decisions, we put Aglet on notice that the Commission staff may audit Aglet records related to this award. Thus, Aglet must make and retain adequate accounting and other documentation to support

all claims for intervenor compensation. Aglet's records should identify specific issues for which it requests compensation, the actual time spent by each employee, the applicable hourly rate, fees paid to consultants, and any other costs for which compensation may be claimed.

Findings of Fact

1. Aglet has made a timely request for compensation for its contribution to D.02-02-052.

2. Aglet has previously made a showing of significant financial hardship and has been found eligible for compensation in this proceeding by ruling dated April 20, 2001.

3. Aglet has contributed substantially to D.02-02-052.

4. Aglet has requested hourly rates for its expert James Weil that have already been approved by the Commission in previous decisions.

5. Aglet allocated its claimed hours into major categories, taking into account voluntary disallowances for various issues. The hourly breakdowns and allocation to different activities reasonably support the claimed hours for Aglet.

6. Aglet's costs of participation were productive in relation to the overall results reached in D.02-02-052.

7. The miscellaneous costs incurred by Aglet are reasonable in relation to its overall costs of participation.

Conclusions of Law

1. Aglet has fulfilled the requirements of §§ 1801-1812, which govern awards of intervenor compensation.

2. Aglet should be awarded \$34,242.33 for its contribution to D.02-02-052, to be paid in accordance with the order adopted below.

3. Per Rule 77.7(f)(6) of the Commission's Rules of Practice and Procedure, the comment period for this compensation decision may be waived.

4. This order should be effective today so that Aglet may be compensated without unnecessary delay.

O R D E R

IT IS ORDERED that:

1. Aglet Consumer Alliance (Aglet) is awarded \$34,242.33 in compensation for its substantial contribution to Decision 02-02-052.

2. Pacific Gas and Electric Company (PG&E) shall pay Aglet \$17,121.16, its share of the total award, within 30 days of the effective date of this order. PG&E shall also pay interest on the award at the rate earned on prime, three-month commercial paper, as reported in Federal Reserve Statistical Release G.13, with interest, commencing the 75th day after Aglet filed its compensation request and continuing until full payment is made.

3. Southern California Edison Company (Edison) shall pay Aglet \$14,210.57, its share of the total award, within 30 days of the effective date of this order. Edison shall also pay interest on the award at the rate earned on prime, three-month commercial paper, as reported in Federal Reserve Statistical Release G.13, with interest commencing the 75th day after Aglet filed its compensation request and continuing until full payment is made.

4. San Diego Gas & Electric Company (SDG&E) shall pay Aglet \$2,910.60, its share of the total award, within 30 days of the effective date of this order. SDG&E shall also pay interest on the award at the rate earned on prime, three-month commercial paper, as reported in Federal Reserve Statistical

Release G.13, with interest commencing the 75th day after Aglet filed its compensation request and continuing until full payment is made.

5. The comment period for today's decision is waived.

This order is effective today.

Dated June 27, 2002, at San Francisco, California.

LORETTA M. LYNCH
President
HENRY M. DUQUE
CARL W. WOOD
GEOFFREY F. BROWN
MICHAEL R. PEEVEY
Commissioners